



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1171]

Certain Child Resistant Closures with Slider Devices Having a User Actuated Insertable Torpedo for Selectively Opening the Closures and Slider Devices Therefor

Commission Final Determination of Violation of Section 337; Issuance of a General Exclusion Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to affirm, with modified reasoning, an initial determination (“ID”) of the presiding administrative law judge (“ALJ”) granting summary determination on violation of section 337 by certain defaulting respondents. The Commission has also determined to issue a general exclusion order (“GEO”) barring entry of certain child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor that infringe the asserted claims of the three patents at issue in this investigation. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at

<https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On August 21, 2019, the Commission instituted this investigation based on a complaint filed by Reynolds Presto Products Inc. ("Presto"). 84 *Fed. Reg.* 43616-17 (Aug. 21, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) ("section 337") based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor by reason of infringement of certain claims of U.S. Patent Nos. 9,505,531 ("the '531 patent"); 9,554,628; and 10,273,058 ("the '058 patent") (collectively, the "Asserted Patents"). *Id.* at 43616. The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation names six respondents: Dalian Takebishi Packing Industry Co., Ltd. of Dalian, China ("Dalian Takebishi"); Dalian Altma Industry Co., Ltd. of Dalian, Liaoning, China ("Dalian Altma") (collectively, the "Dalian Respondents"); and Japan Takebishi Co., Ltd., of Tokyo, Japan; Takebishi Co., Ltd., of Shiga, Japan; Shanghai Takebishi Packing Material Co., Ltd., of Shanghai, China; and Qingdao Takebishi Packing Industry Co., Ltd., of Qingdao, China (collectively, the "Unserved Respondents"). *Id.* at 43616-17. It also names the Office of Unfair Import Investigations ("OUII") as a party. *Id.* at 43617.

On October 7, 2019, the ALJ issued an ID finding the two Dalian Respondents in default. Order No. 7 (Oct. 30, 2019), *unreviewed by Comm'n Notice* (Nov. 26, 2019). On November 19, 2019, the ALJ issued an ID terminating the investigation in part based on Presto's withdrawal of the complaint as to the Unserved Respondents, which were never served with the complaint.

Order No. 10 (Nov. 19, 2019), *unreviewed by* Comm’n Notice (Dec. 18, 2019). That ID also terminated the investigation as to (i) claims 6 and 7 of the ’531 patent and (ii) claims 6 and 7 of the ’058 patent. *Id.*

On November 15, 2019, Presto filed a motion for summary determination that the domestic industry requirement was satisfied and that a violation had been established. Presto’s motion requested immediate entry of a limited exclusion order (“LEO”) against the Dalian Respondents, a GEO, and a 100 percent bond. On November 26, 2019, OUII filed a response to the motion supporting the summary determination motion and the requested GEO and 100 percent bond during the period of Presidential review.

On April 21, 2020, the ALJ issued an ID granting summary determination of violation of section 337 by the Dalian Respondents. The ID also contains the ALJ’s recommendation on remedy and bonding, in which the ALJ recommends issuance of a GEO or, in the alternative, a LEO directed to the Dalian Respondents, and that a 100 percent bond be set for importation during the period of Presidential review.

On May 1, 2020, OUII filed a petition seeking review of portions of the ID’s analysis of the economic prong of the domestic industry requirement. No other party petitioned for review of the ID, and no party filed a response to OUII’s petition.

On June 5, 2020, the Commission determined to review the ID in part with respect to the ID’s analysis of the economic prong of the DI requirement. 85 FR 35662, 35663 (June 11, 2020). The Commission’s notice also requested written submissions on remedy, the public interest, and bonding. *Id.* In particular, the notice requested a response to certain questions regarding whether Presto seeks cease and desist orders against the Dalian Respondents. *Id.* On June 11 and 12, 2020, Presto and OUII, respectively, filed written submissions in response to the

Commission's notice. On June 19, 2020, OUII filed a reply submission. No other submissions were received.

Having examined the record in this investigation, including the ID granting summary determination, and the party's submissions, the Commission has determined to affirm, with modified reasoning, the ID's findings with respect to the economic prong of the domestic industry requirement and, thus, the ID's finding of a violation of section 337. The Commission has also determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed entry of certain child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor that infringe certain claims of the three patents asserted in the investigation, pursuant to section 337(g)(2) (19 U.S.C. 1337(g)(2)). The Commission has further determined that the bond during the period of Presidential review pursuant to section 337(j) (19 U.S.C. 1337(j)) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the GEO. The Commission has also determined that the public interest factors enumerated in subsection 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude the issuance of the GEO. The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance. This investigation is hereby terminated in its entirety.

The Commission vote for these determinations took place on August 27, 2020.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise

provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant(s) complete service for any party/parties without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (EDIS).

By order of the Commission.

Issued: August 27, 2020.

Lisa Barton,

Secretary to the Commission.

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